

SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR WARD

Introduced: 1/17/01

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing an Alaska Toll Bridge and Causeway Authority; and providing for**
2 **an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 44.42 is amended by adding new sections to read:

5 **Article 2. Alaska Toll Bridge and Causeway Authority.**

6 **Sec. 44.42.110. Establishment of authority.** There is established the Alaska
7 Toll Bridge and Causeway Authority. The authority is a public corporation of the
8 state in the department but with separate and independent legal existence.

9 **Sec. 44.42.120. Membership of authority.** The authority consists of the
10 commissioners of transportation and public facilities, community and economic
11 development, and revenue, or their designees, and four public members who are
12 residents appointed by the governor. The public members of the authority serve at the
13 pleasure of the governor for staggered terms of five years. A vacancy among the
14 public members of the authority is filled by appointment by the governor. A person

1 selected to fill a vacancy among the public members holds office for the balance of the
2 term for which the member's predecessor is appointed.

3 **Sec. 44.42.130. Officers and quorum.** The members shall elect officers they
4 determine desirable. The powers of the authority are vested in the members, and four
5 members of the authority constitute a quorum. Action may be taken and motions and
6 resolutions adopted by the authority at a meeting by the affirmative vote of at least
7 four members. The public members of the authority serve without compensation but
8 are entitled to per diem and travel expenses authorized by law under AS 39.20.180.

9 **Sec. 44.42.140. Staff.** The authority shall employ an executive director who
10 may, with the approval of the authority, employ additional staff as necessary. In
11 addition to its staff of regular employees, the authority may contract for and engage
12 the services of legal and bond counsel, consultants, experts, and financial and
13 technical advisors the authority considers necessary for the purpose of conducting
14 studies, investigations, hearings, or other proceedings. The members of the authority
15 shall establish the compensation of the executive director, who is subject to the
16 provisions of AS 39.25.

17 **Sec. 44.42.150. Powers and duties of the authority.** (a) In furtherance of its
18 corporate purposes and in addition to its other powers, the authority may

- 19 (1) sue and be sued;
- 20 (2) have a seal and alter the seal at the pleasure of the authority;
- 21 (3) make and alter bylaws for its organization and internal
22 management;
- 23 (4) acquire real or personal property, whether by purchase, gift, lease,
24 or exchange, where, in the judgment of the authority, the action is in furtherance of its
25 corporate purposes;
- 26 (5) adopt regulations governing the exercise of its corporate powers;
- 27 (6) issue bonds to carry out any of its corporate purposes and powers,
28 including the acquisition, design, or construction of a project to be owned or leased, as
29 lessor or lessee, by the authority, or the acquisition of an interest in a project or the
30 establishment or increase of reserves to secure or to pay the bonds or interest on them,
31 and the payment of all other costs or expenses of the authority incident to and

1 necessary or convenient to carry out its corporate purposes and powers;

2 (7) sell, lease as lessor or lessee, exchange, donate, convey, or
3 encumber in any manner, by mortgage or by creation of any other security interest,
4 real or personal property owned by the authority or in which the authority has an
5 interest when, in the judgment of the authority, the action is in furtherance of its
6 corporate purposes;

7 (8) accept gifts or grants and enter into contracts or other transactions
8 with any person;

9 (9) deposit or invest its funds, subject to agreements with bondholders;

10 (10) enter into contracts with the United States or a person and, subject
11 to the laws of the United States, with a foreign country or its agencies for the
12 financing, design, construction, acquisition, operation, and maintenance of all or any
13 part of a toll bridge or causeway, either inside or outside the state, and for the security
14 of any bonds of the authority issued or to be issued for the project;

15 (11) apply to the appropriate agencies of the state, the United States, a
16 foreign country, and any other proper agency for the permits, licenses, or approvals as
17 may be necessary; may design, construct, maintain, and operate toll bridges and
18 causeways in accordance with licenses and permits; and may obtain, hold, and use the
19 licenses and permits in the same manner as any other person;

20 (12) perform reconnaissance studies, feasibility studies, and
21 engineering, survey, and design with respect to toll bridges and causeways;

22 (13) enter into contracts or agreements with respect to the exercise of
23 any of its powers, and do all things necessary or convenient to carry out its corporate
24 purposes and exercise its powers;

25 (14) maintain complete and separate financial account of each toll
26 bridge and causeway;

27 (15) utilize a design and construction contract for projects over
28 \$100,000,000; in this paragraph "design and construction contract" means one contract
29 for both design and construction of a toll bridge or causeway;

30 (16) establish, levy, and collect tolls and other charges it considers
31 necessary for a project sufficient to pay costs of operation, maintenance, rehabilitation,

1 and improvement; may pay the cost of acquisition, design, or construction, including
 2 the payment, amortization, and retirement of bonds or other securities or obligations
 3 assumed, issued, or incurred by the authority, together with interest; and may provide
 4 reserves for those purposes;

5 (17) pledge the tolls and other revenues, subject to prior pledges, as
 6 security for the repayment with interest of money borrowed by the authority or
 7 advanced to the authority for its authorized purposes and as security for the
 8 satisfaction of any other obligations assumed by the authority in regard to loans or
 9 advances;

10 (18) receive and accept funds from the state or the federal government
 11 or a municipality upon a cooperative or other basis for the design and construction of a
 12 toll bridge or causeway authorized under AS 44.42.110 - 44.42.290.

13 (b) The authority shall coordinate the exercise of its powers to plan, design,
 14 construct, operate, and maintain toll bridges and causeways with the department.

15 **Sec. 44.42.160. Limitation on powers.** The authority has only those powers
 16 expressly granted or reasonably implied under AS 44.42.110 - 44.42.290 or reasonably
 17 necessary or convenient to carry out its corporate purposes and to exercise the powers
 18 expressly granted in or reasonably implied under AS 44.42.110 - 44.42.290. The
 19 authority does not have powers of eminent domain, taxation, land use planning,
 20 zoning, permitting, or other similar governmental powers.

21 **Sec. 44.42.170. Bonds for the authority.** The authority may borrow money
 22 and may issue bonds on which the principal and interest are payable from money
 23 derived from the tolls, fees, charges, and other revenue from projects financed under
 24 AS 44.42.110 - 44.42.290. Before issuing bonds for a project, the authority shall
 25 submit to the state bond committee a description of the bond issue and an independent
 26 economic feasibility analysis of the project and expected revenues. This information
 27 may be contained in a preliminary prospectus, offering circular, or official statement
 28 relating to the bond issue. Bonds may not be issued unless the state bond committee
 29 finds, based upon the information submitted by the authority under this section and
 30 other information that is reasonably available to the committee, that the project
 31 revenues can be reasonably expected to be adequate for payment of the principal and

1 interest on the bonds to be issued and that issuance of the bonds by the authority
 2 would not be expected to adversely affect the ability of the state or its political
 3 subdivisions to market bonds. Bonds may not be issued unless approved by law.

4 **Sec. 44.42.180. Trust indentures and trust agreements.** (a) At the
 5 discretion of the authority, an issue of bonds may be secured by a trust indenture or
 6 trust agreement between the authority and a corporate trustee, by a secured loan
 7 agreement or other instrument, or by a resolution giving powers to a corporate trustee,
 8 by means of which the authority may

9 (1) make agreements with the trustee or the holders of the bonds that
 10 the authority determines to be necessary or desirable, including agreements as to the

11 (A) application, investment, deposit, use, and disposition of

12 (i) the proceeds of bonds of the authority;

13 (ii) money or other property of the authority; or

14 (iii) money or other property in which the authority has
 15 an interest;

16 (B) fixing and collecting of tolls, charges, fees, or other
 17 consideration for and the other terms to be incorporated in contracts with
 18 respect to a project;

19 (C) assignment by the authority of its rights in contracts with
 20 respect to a project or in a mortgage or other security interest created with
 21 respect to a project to a trustee for the benefit of bondholders;

22 (D) terms and conditions under which the authority may issue
 23 additional bonds;

24 (E) vesting in a trustee of rights, powers, duties, funds, or
 25 property in trust for the benefit of bondholders, including the right to enforce
 26 payment, performance, and all other rights of the authority or of the
 27 bondholders, under a lease, power of contract, contract of sale, mortgage,
 28 security agreement, or trust agreement with respect to a project by injunction
 29 or other proceeding or by taking possession of by agent or otherwise and
 30 operating a project and collecting rents or other consideration and applying the
 31 same in accordance with the trust agreement;

1 (2) pledge, mortgage, or assign money, leases, agreements, property,
2 or other rights or assets of the authority either presently in hand or to be received in
3 the future, or both; and

4 (3) provide for any other matters that affect the security or protection
5 of the bonds.

6 (b) Notwithstanding any other provisions of AS 44.42.110 - 44. 42.290, the
7 trust agreement must contain an agreement by the authority that the authority will at
8 all times maintain rates, tolls, fees, or charges sufficient

9 (1) to pay the costs of operation and maintenance of the project and the
10 principal of and interest on bonds issued under the trust agreement as the bonds
11 severally become due and payable;

12 (2) to provide for debt service coverage as considered necessary by the
13 authority for the marketing of its bonds; and

14 (3) to provide for renewals, replacements, and improvements of the
15 project, and to maintain reserves required by the terms of the trust agreement.

16 (c) For the purpose of securing one or more issues of its bonds, the authority
17 may establish one or more special funds, called "capital reserve funds," and shall pay
18 into those capital reserve funds the proceeds of the sale of its bonds and any other
19 money that may be made available to the authority for the purposes of those funds.
20 The funds shall be established only if the authority determines that the establishment
21 would enhance the marketability of the bonds. All money held in a capital reserve
22 fund, except as provided in this section, shall be used as required solely for (1) the
23 payment of the principal of and interest on bonds or of the sinking fund payments with
24 respect to those bonds, (2) the purchase or redemption of bonds, or (3) the payment of
25 a redemption premium required to be paid when those bonds are redeemed before
26 maturity. However, money in a fund may not be withdrawn from the fund at any time
27 in an amount that would reduce the amount of the fund to less than the capital reserve
28 requirement set out in (d) of this section, except for the purpose of making, with
29 respect to those bonds, payment, when due, of principal, interest, redemption
30 premiums, and the sinking fund payments for the payment of which other money of
31 the authority is not available. Income or interest earned by or increment to a capital

1 reserve fund due to the investment of the fund or any other amounts in the fund may
2 be transferred by the authority to other funds or accounts of the authority to the extent
3 that the transfer does not reduce the amount of the capital reserve fund below the
4 capital reserve fund requirement.

5 (d) If the authority decides to issue bonds secured by a capital reserve fund,
6 the bonds may not be issued if the amount in the capital reserve fund is less than the
7 amount that may be established by resolution of the authority, called the "capital
8 reserve fund requirement," unless the authority, at the time of issuance of the
9 obligations, deposits in the capital reserve fund from the proceeds of the obligations to
10 be issued or from other sources an amount that, together with the amount then in the
11 fund, will not be less than the capital reserve fund requirement.

12 (e) In computing the amount of a capital reserve fund for the purpose of this
13 section, securities in which all or a portion of the funds are invested shall be valued by
14 some reasonable method established by the authority by resolution. Valuation on a
15 particular date shall include the amount of any interest earned or accrued to that date.

16 (f) The chair of the authority shall annually, not later than January 2, deliver to
17 the governor and the legislature a certificate stating the sum, if any, required to restore
18 any capital reserve fund to the capital reserve fund requirement. The legislature may
19 appropriate a sum, and all sums appropriated during the then current fiscal year by the
20 legislature for restoration shall be deposited by the authority in the proper capital
21 reserve fund.

22 (g) Nothing in this section creates a debt or liability of the state.

23 (h) If the authority decides to issue bonds secured by a capital reserve fund,
24 the bonds may not be issued until 30 days after the authority has mailed notification to
25 the state bond committee and the Legislative Budget and Audit Committee by certified
26 mail of its intention to establish a capital reserve fund to secure the bond issue. The
27 notification must include the amount of the capital reserve fund to be established, the
28 amount of bonds proposed to be issued, and the total cost of the project for which the
29 bonds are to be issued. The notification shall be accompanied by an estimate by the
30 authority of the need to withdraw money from the capital reserve fund during the term
31 of the bond issue, the amount that may be necessary to withdraw, and the time at

1 which withdrawals are estimated to be needed. The authority shall annually prepare a
2 revised estimate, considering the same factors, and a statement of all withdrawals that
3 have occurred from the date of issuance of the bonds to the end of the calendar year.
4 The revised estimate and statement shall be submitted to the state bond committee and
5 the Legislative Budget and Audit Committee by January 30 of the succeeding year.

6 **Sec. 44.42.190. Validity of pledge.** It is the intention of the legislature that a
7 pledge made in respect of bonds shall be perfected and shall be valid and binding from
8 the time the pledge is made, that the money or property so pledged and thereafter
9 received by the authority shall immediately be subject to the lien of the pledge without
10 physical delivery or further act, and that the lien of the pledge shall be valid and
11 binding against all parties having claims of any kind in tort, contract, or otherwise
12 against the authority irrespective of whether the parties have notice. Neither the
13 resolution, trust agreement, nor any other instrument by which a pledge is created need
14 be recorded or filed under the provisions of the Uniform Commercial Code to be
15 perfected or to be valid, binding, or effective against the parties. This section does not
16 affect title to or conveyances of real property, and does not limit the applicability of
17 AS 40.17.080(b).

18 **Sec. 44.42.200. Nonliability on bonds.** (a) Neither the members of the
19 authority nor a person executing the bonds is liable personally on the bonds or is
20 subject to personal liability or accountability by reason of the issuance of the bonds.

21 (b) The bonds issued by the authority do not constitute an indebtedness or
22 other liability of the state or of a political subdivision of the state, but shall be payable
23 solely from the income and receipts or other funds or property of the authority. The
24 authority may not pledge the faith or credit of the state or of a political subdivision of
25 the state, except the authority, to the payment of a bond, and the issuance of a bond by
26 the authority does not directly or indirectly or contingently obligate the state or a
27 political subdivision of the state to apply money from, levy, or pledge any form of
28 taxation to the payment of the bond.

29 **Sec. 44.42.210. Pledge of the state.** The state pledges to and agrees with the
30 holders of bonds issued under AS 44.42.110 - 44.42.290 and with the federal agency
31 that loans or contributes funds in respect to a project that the state will not limit or

1 alter the rights and powers vested in the authority under AS 44.42.110 - 44.42.290 to
 2 fulfill the terms of a contract made by the authority with the holders or federal agency
 3 or in any way impair the rights and remedies of the holders until the bonds, together
 4 with the interest on them with interest on unpaid installments of interest, and all costs
 5 and expenses in connection with an action or proceeding by or on behalf of the
 6 holders, are fully met and discharged. The authority is authorized to include this
 7 pledge and agreement of the state, insofar as it refers to holders of bonds of the
 8 authority, in a contract with the holders and, insofar as it relates to a federal agency, in
 9 a contract with the federal agency.

10 **Sec. 44.42.220. Exemption from taxation.** The real and personal property of
 11 the authority and its assets, income, and receipts are declared to be the property of a
 12 political subdivision of the state and, together with any project financed under
 13 AS 44.42.110 - 44.42.290, are exempt from all taxes and special assessments of the
 14 state or a political subdivision of the state. All bonds of the authority are declared to
 15 be issued by a political subdivision of the state and for an essential public and
 16 governmental purpose and to be a public instrumentality. The bonds, the interest on
 17 the bonds, the income from the bonds and the transfer of the bonds, and all assets,
 18 income, and receipts pledged to pay or secure the payment of the bonds or interest on
 19 the bonds shall at all times be exempt from taxation by or under the authority of the
 20 state, except for inheritance and estate taxes and taxes on transfers by or in
 21 contemplation of death. Nothing in this section affects or limits an exemption from
 22 license fees, property taxes, or excise, income, or other taxes provided under any other
 23 law, nor does it create a tax exemption with respect to the interest of any business
 24 enterprise or other person, other than the authority, in any property, assets, income,
 25 receipts, project, or lease, whether or not financed under AS 44.42.110 - 44.42.290.

26 **Sec. 44.42.230. Bonds legal investments for fiduciaries.** The bonds of the
 27 authority are securities in which all public officers and bodies of the state and all
 28 municipalities and municipal subdivisions, all insurance companies and associations
 29 and other persons carrying on an insurance business, all banks, bankers, trust
 30 companies, savings banks, savings associations, including savings and loan
 31 associations and building and loan associations, investment companies and other

persons carrying on banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and other persons who are now or may afterward be authorized to invest in bonds or other obligations of the state may properly and legally invest money including capital in their control or belonging to them. Notwithstanding any other provision of law, the bonds of the authority are also securities that may be deposited with and may be received by all public officers and bodies of the state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may afterward be authorized.

Sec. 44.42.240. Audit. The legislative auditor shall audit or cause to have audited annually the financial records of the authority. The legislative auditor may prescribe the form and content of the financial records of the authority and shall have access to these records at any reasonable time.

Sec. 44.42.250. State appropriations for toll bridges and causeways not affected. AS 44.42.110 - 44.42.290 do not prevent the state from making appropriations for or in aid of the acquisition, design, or construction under AS 44.42.110 - 44.42.290 of a toll bridge or causeway, or property, franchise, or right appurtenant to a toll bridge or causeway, or the transportation facilities of a toll bridge or causeway, or for the purpose of making preliminary surveys, plans, and estimates of the cost of a toll bridge or causeway and meeting other preliminary expenses the legislature considers proper.

Sec. 44.42.290. Definitions. In AS 44.42.110 - 44.42.290,

(1) "authority" means the Alaska Toll Bridge and Causeway Authority;

(2) "toll bridge or causeway" or "project" means a bridge or causeway constructed or acquired under AS 44.42.110 - 44.42.290 on which tolls are charged, together with all appurtenances, additions, alterations, improvements, replacements, approaches, lands, and interests therein used, and buildings and improvements as may be determined by the authority.

* **Sec. 2.** AS 39.50.200(b) is amended by adding a new paragraph to read:

(57) Alaska Toll Bridge and Causeway Authority (AS 44.42.110).

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1 INITIAL TERMS. The governor shall designate the terms of the public members of
2 the authority first appointed under AS 44.42.120 as follows: one public member shall serve a
3 term of two years, one public member shall serve a term of three years, one public member
4 shall serve a term of four years, and one public member shall serve a term of five years.

5 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).